

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

SI 05 Crim. 0888 (LAK)

JEFFREY STEIN, et al.,

Defendants.

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ORDER

LEWIS A. KAPLAN, *District Judge*.

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DOC #: _____
DATE FILED: 7/17/07**

The government has applied by letter for a stay pending appeal of this Court's order of July 16, 2007 to the extent it dismissed the indictment as against thirteen of the defendants. It does not contend that the dismissal should be stayed in a manner that would force these defendants to trial in October along with the other five defendants. Rather, it raises only administrative and bail related concerns.

First, the government maintains that a stay would be appropriate to ensure that the Court retains authority over the appearance and withdrawal of counsel who, absent some action by the Court, might regard themselves as free to withdraw from representing their clients, an event that might result in substantial delay in the event the Court of Appeals were to overturn any of the dismissals.

Second, the government points to the protective order governing various discovery materials pursuant to which defense counsel are obliged to return the documents, insofar as is relevant here, "at the end of the criminal proceedings." The concern seems to be that the dismissal of the indictment was "the end of the criminal proceedings" and that the discovery material, absent a stay, should be returned.

Finally, the government announces its position that the dismissed defendants who have been released on bail remain subject to the previously imposed bail conditions pending the government's appeal. It is concerned, however, that defendants may take a different position.

The government does not seek the immediate return of documents subject to the protective order. In view of the government's position with respect to bail, any defendant who acts on the assumption that he or she is not now subject to the bail conditions previously imposed does so at the risk of violating the Bail Reform Act. Hence, the only concern raised by the government that requires action by the Court before defendants may be heard is the first. Accordingly, the Court hereby temporarily stays the effect of its order to the extent, and only to the extent, if any, that the order otherwise might have allowed any of defendants' counsel to withdraw. This temporary stay shall remain in effect pending the submission of any opposing papers, which shall be served and filed no later than July 19 at 4 p.m., and the determination of the government's application. Nothing herein is intended to suggest that the government has satisfied any criterion relating to likelihood of success on appeal.

SO ORDERED.

Dated: July 17, 2007


Lewis A. Kaplan
United States District Judge